

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MARIA FRONTADO**

Claimant

VS.

**RUBBERMAID SPECIALTY PRODUCTS**

Respondent

Self Insured

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Docket No. 217,058

**ORDER**

Respondent requested Appeals Board review of Administrative Law Judge Nelsonna Potts Barnes' October 6, 1999, preliminary hearing Order.

**ISSUES**

After an initial preliminary hearing, the Administrative Law Judge entered the September 3, 1999, preliminary hearing Order that found claimant had proven she suffered from major depression as well as a psychogenic pain disorder directly related to work-related physical injuries. The Administrative Law Judge ordered respondent to provide treatment for claimant's psychological problems through Dr. Jorge Beber.

The respondent timely appealed that preliminary hearing Order to the Appeals Board. In an Order dated November 29, 1999, the Appeals Board affirmed the Administrative Law Judge's September 3, 1999, preliminary hearing Order.

The October 6, 1999, preliminary hearing Order, that is the subject of this appeal, changes the authorized treating physician from Dr. Jorge Beber to Dr. J. A. Montero of Oklahoma City, Oklahoma. On appeal, the respondent contends the Appeals Board should reverse the preliminary hearing Order because the preliminary hearing procedures as required by K.S.A. 1998 Supp. 44-534(a) were not followed.

In contrast, claimant argues that the Appeals Board does not have jurisdiction to review the issue of a change of physician from a preliminary hearing order. Therefore, claimant contends the Appeals Board should dismiss the respondent's appeal.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In a letter dated September 13, 1999, claimant's attorney notified respondent's attorney that there was a need to change Dr. Jorge Beber as the authorized treating physician.

Claimant had attempted to schedule treatment with Dr. Beber, but he was not accepting any new patients. Because claimant speaks and understands little of the English language, claimant had requested an authorized treating physician that speaks and understands Spanish.

In a letter dated September 14, 1999, claimant's attorney scheduled a status conference on September 27, 1999, before the Administrative Law Judge to request a change in the treating physician who was authorized in the initial preliminary hearing Order dated September 3, 1999. At the status conference, respondent objected to the appointment of Dr. J. A. Montero because he was an out-of-state physician. Claimant, however, currently resides in Ponca City, Oklahoma. Because of the respondent's objection, the Administrative Law Judge continued the status conference to allow both parties to investigate the availability of a Spanish-speaking health care provider in the Wichita, Kansas area who was qualified to treat claimant's psychological problems.

On October 4, 1999, another status conference was held before the Administrative Law Judge. Neither party had been able to locate a Spanish-speaking health care provider in the Wichita area who was qualified to treat claimant's psychological problems. Therefore, the Administrative Law Judge appointed Dr. J. A. Montero as the authorized treating physician.

The respondent contends the Appeals Board should reverse the Administrative Law Judge's October 6, 1999, preliminary hearing Order because the procedural requirements of the preliminary hearing statute were not followed. The respondent argues the claimant failed to file an Application for Preliminary Hearing, failed to give notice to respondent of the preliminary hearing, and respondent was not given an opportunity to present evidence at the hearing.<sup>1</sup> Additionally, respondent argues a record was not made of the proceedings as required by statute.<sup>2</sup>

The Appeals Board disagrees with the respondent and finds that the Administrative Law Judge's October 6, 1999, preliminary hearing Order should be affirmed.

The Appeals Board has held in the past, and continues to hold, that the Administrative Law Judge retains jurisdiction over the parties and the issues presented at the initial preliminary hearing. Therefore, later hearings conducted to address those same preliminary hearing issues are treated as a continuation of the initial preliminary hearing. That interpretation of the Act affords the parties expeditious hearings and avoids cumbersome procedures that would only serve to delay a prompt decision.<sup>3</sup>

In this case, the Administrative Law Judge had previously found claimant was in need of medical treatment for certain psychological problems that were directly traceable to claimant's work-related physical injuries. The physician appointed as the authorized physician

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<sup>1</sup>See K.S.A. 1998 Supp. 44-534(a).

<sup>2</sup>See K.S.A. 44-552.

<sup>3</sup>See Blue v LSC, WCAB Docket No. 236,567 (Feb. 1999) and Morales v Excel Corporation, WCAB Docket No. 220,221 (Jan. 1999).

to treat claimant's psychological problems in that Order would not provide the necessary medical treatment because he was not taking any new patients. The Appeals Board finds that claimant's current request for another authorized treating physician is simply a request addressing one of the same issues that was addressed at the prior preliminary hearing.

Furthermore, the Appeals Board finds respondent was given notice of the request and respondent's attorney appeared at both of the conferences held concerning the request before the Administrative Law Judge. The Appeals Board finds that claimant substantially complied with the preliminary hearing statutory requirements by serving respondent with notice that the authorized treating physician had to be changed because the physician authorized in the initial preliminary hearing Order would not treat the claimant.

The respondent also argued that the Administrative Law Judge's October 6, 1999, preliminary hearing Order should be reversed because a record was not made of the proceedings as required by statute.<sup>4</sup> In her brief, claimant contends the Administrative Law Judge afforded the parties an opportunity to have a court reporter present and make a record of the proceedings. But both parties waived this right. In its brief, however, respondent argues it did not waive its right to have a court reporter present and make a record of the status conference. The Appeals Board has previously held it is the duty of the aggrieved party to request a record for appellate review purposes.<sup>5</sup> Because no record was made, there is no proof the respondent requested a record be made of the proceedings and the Administrative Law Judge refused the request. The Appeals Board concludes respondent was given notice of the purpose the status conference and, therefore, had the opportunity to request a record be made of the proceedings and failed to do so.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Administrative Law Judge Nelsonna Potts Barnes' October 6, 1999, preliminary hearing Order should be, and it is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1999.

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BOARD MEMBER

c: Carlos Nolla-Corretjer, Wichita, KS  
Terry J. Torline, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director

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<sup>4</sup> See K.S.A. 44-552.

<sup>5</sup> See Evans v The Boeing Company - Wichita, WCAB Docket No. 179,663 (March 1994).